

# **The Past and Future Challenges of Negotiation Theory**

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## **I. MEETING THE CHALLENGE OF INTERDISCIPLINARY TEACHING**

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Academic courses in negotiation have an approximately forty-year history. By examining the development of these courses in negotiation, theory and research study teachings, and imparted skills, we can evaluate the development of negotiation theory<sup>1</sup> as a field. The last thirty years in particular provide an important lens on the explosion of dispute resolution and negotiation in law and business school curricula. Furthermore, this analysis will help situate us for the challenges of the next thirty years.

If negotiation is to continue to expand its reach, becoming both more useful and insightful, then negotiation theory needs to become more interdisciplinary, more global, and more practical. In meeting the first of these challenges, negotiation scholars have tackled the interdisciplinary work of others. For the other two challenges, however, we argue that more will need to be done over the next thirty years.

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<sup>1</sup> The authors acknowledge that with regard to this paper, this term may be used differently in the law and business school fields. In the behavioral science research field, 'theory' would refer to the fundamental behavioral science theoretical constructs of personal and contextual factors that affect how people negotiate. In the law field and within this context of this paper, 'theory' refers both to this research foundation, as well as to how it is applied to the negotiation process.

Furthermore, all three of these challenges will be better met when negotiation theory (as used in law and business schools) is both a giver and receiver of wisdom. For example, the law- and business-based theory of problem-solving has permeated to other fields. Likewise, the best advice from communication or political science has been brought to law and business schools. For the other challenges, again, this is not yet the case. Negotiation theory in the U.S. should both *give* advice for how to deal with cross-cultural and international disputes while *receiving* the best advice from negotiators around the world. And our best theory of negotiation should operate in a continual cycle of learning from practice, building a theory, testing that in practice, and refining the theory in order to really make it practical.

This essay will look both backward and forward within the development of negotiation theory in law schools and business schools to highlight these challenges. The first section will address the historical assemblage of negotiation theory, coursework, and exercises drawn from a variety of disciplines and pulled together as the core instructional foundation for early law and business school classes. We will look forward to outline how interdisciplinary negotiation theory and instructional methods will need to continually draw upon these separate strands in order to create a vibrant and robust—and yet practical—theory of negotiation.

The second section will examine the reach of negotiation theory and research into cross-cultural, international, and global contexts, arguing that, while U.S. practitioners and professors have written about the application of negotiation theory in a global context, much more needs to be done so that we in the U.S. are drawing from the best and richest materials found around the world. The language and cultural barriers must be breached so that the communication is more extensive than simply broadcasting the U.S. best practices overseas. Moreover, we must be assured that our students are prepared to negotiate effectively in an increasingly multicultural world.

Finally, the last section of the essay will address how negotiation theory is taught and implemented in order to ensure that theory and research on effective negotiation are turned into best practices. Both early and contemporary negotiation curricula have focused on role-plays and case studies to foster a more experiential learning environment—and this has been wildly popular. And to build on these strengths, the challenges for the next thirty years are to more directly identify what, how, and whom we teach. Past revolutions of negotiation theory have occurred at the conceptual levels—for example, shifting from an adversarial to a problem-solving approach. And, yet, we know that practitioners need to not only shift their thinking about the preferred approach, but also to be able to translate their thinking into action and model the actual skills negotiators need. Focusing more on how we teach these skills—from adding more than role-plays in class to thinking carefully

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about who is in our audience—will also help make the application of negotiation theory as compelling (and effective) for the next thirty years as it has been for the past thirty.

### I. MEETING THE CHALLENGE OF INTERDISCIPLINARY TEACHING

Although today the majority of both law schools and business schools teach negotiation (and, between the two professions, likely have a higher percentage of students taking some kind of negotiation class than any other field), neither law nor business can actually lay sole claim to the underlying theories of negotiation. Early theories of negotiation relied on an amalgam of conceptual works from economics and game theory,<sup>2</sup> labor relations,<sup>3</sup> international relations,<sup>4</sup> and social psychology.<sup>5</sup> Only into the 1980s, as negotiation courses became more standard, did material and experts in negotiation emerge. In the mid-1970s, business schools began to recognize that negotiation and conflict management skills were broadly applicable to a variety of managerial disciplines, not just to sales or labor relations. Courses emerged that combined theory and research “games” (e.g. Prisoner’s Dilemma) with advice offered from early ‘how to do it’ management books<sup>6</sup>, and eventually led to textbooks and resource materials devoted to a business school negotiation course.<sup>7</sup> For law schools, a focus on negotiation as problem-solving coincided with the growth of alternative dispute resolution as a method for resolving cases outside the courtroom.<sup>8</sup> Although these developments did not necessarily depend on one another, the shift in both the

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<sup>2</sup> SIDNEY SIEGEL & LAWRENCE E. FOURAKER, *BARGAINING AND GROUP DECISION MAKING* (1960); ANATOL RAPOPORT, *STRATEGY AND CONSCIENCE* (1964).

<sup>3</sup> JOHN T. DUNLOP & JAMES J. HEALY, *COLLECTIVE BARGAINING: PRINCIPLES AND CASES* (Richard D. Irwin, Inc. rev. ed., 1955); RICHARD E. WALTON & ROBERT B. MCKERSIE, *A BEHAVIORAL THEORY OF LABOR NEGOTIATIONS: AN ANALYSIS OF A SOCIAL INTERACTION SYSTEM* (1965).

<sup>4</sup> THOMAS C. SCHELLING, *THE STRATEGY OF CONFLICT* (1960); ROGER FISHER, *INTERNATIONAL CONFLICT FOR BEGINNERS* (1969); I. WILLIAM ZARTMAN & MAUREEN R. BERMAN, *THE PRACTICAL NEGOTIATOR* (1982).

<sup>5</sup> MORTON DEUTSCH, *THE RESOLUTION OF CONFLICT* (1973); JEFFREY Z. RUBIN & BERT R. BROWN, *THE SOCIAL PSYCHOLOGY OF BARGAINING AND NEGOTIATION* (1975).

<sup>6</sup> GERARD I. NIERENBERG, *FUNDAMENTALS OF NEGOTIATING* 125–26 (1973); CHESTER LOUIS KARRASS, *GIVE & TAKE: THE COMPLETE GUIDE TO NEGOTIATING STRATEGIES AND TACTICS* (1974).

<sup>7</sup> ROY J. LEWICKI & JOSEPH AUGUST LITTERER, *NEGOTIATION* (1985); *NEGOTIATION: READINGS, EXERCISES, AND CASES* (Roy J. Lewicki & Joseph A. Litterer, eds., 1985).

<sup>8</sup> *See, e.g., FOUNDATIONS OF DISPUTE RESOLUTION: VOL. I OF COMPLEX DISPUTE RESOLUTION* (Carrie Menkel-Meadow ed., 2012).

lawyering skills of negotiation and mediation was reflected in the development of negotiation theories emerging from law professors.

In the early 1980s, law professors writing in negotiation focused on convincing lawyers that a different kind of approach to negotiation made sense. Roger Fisher's *Getting to Yes* was published in 1981,<sup>9</sup> Gerry Williams wrote about cooperative versus competitive negotiators in 1983,<sup>10</sup> and Carrie Menkel-Meadow wrote her iconic article on legal problem-solving in 1984.<sup>11</sup> The shift in focus from competitive negotiations to problem-solving was the primary contribution of these legal writers. Much of the rest of the 1980s and into the 1990s focused on how to properly teach this approach. Yet, even then, a significant percentage of the readings continued to be from other fields as older readings in business, international relations, and game theory were updated with the newest articles and experiential activities.<sup>12</sup> Beginning in the 1990s, new fields and new readings were added.<sup>13</sup> Cognitive or psychological barriers were first addressed by a group of psychologists and economists,<sup>14</sup> compiled into the volume *Barriers to Conflict Resolution*<sup>15</sup>, and then widely translated into shorter applications and experiments through their students' efforts,<sup>16</sup> as well as the work of other psychologists who focused on the elements of persuasion.<sup>17</sup> A sharpened focus on emotions and identity were also adapted into coursework, and led to

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<sup>9</sup> ROGER FISHER & WILLIAM URY, *GETTING TO YES* (1981).

<sup>10</sup> GERRY WILLIAMS, *LEGAL NEGOTIATION AND SETTLEMENT* (1983).

<sup>11</sup> Carrie Menkel-Meadow, *Toward Another View of Legal Negotiation: The Structure of Problem Solving*, 31 U.C.L.A. L. REV. 754 (1984).

<sup>12</sup> See, e.g., ROY J. LEWICKI, JOSEPH A. LITTERER, JOHN W. MINTON & DAVID SAUNDERS, *NEGOTIATION* (2d ed. 1994); JEANNE BRETT, LEONARD GREENHALGH, DEBORAH KOLB & ROY LEWICKI, *THE MANAGER AS NEGOTIATOR AND DISPUTE RESOLVER* (1985).

<sup>13</sup> For example, two early articles in the OHIO STATE JOURNAL ON DISPUTE RESOLUTION show the push toward other disciplines. See, e.g., Gary Goodpaster, *Rational Decision-Making in Problem Solving Negotiations: Compromise, Interest-Valuation, and Cognitive Error*, 8 OHIO ST. J. ON DISP. RESOL. 299 (1993); Laura Nader, *Controlling Processes in the Practice of Law: Hierarchy and Pacification in the Movement to Re-Form Dispute Ideology*, 9 OHIO ST. J. ON DISP. RESOL. 1 (1993).

<sup>14</sup> See, e.g., *THE BARRIERS TO CONFLICT RESOLUTION* (Kenneth Arrow et al. eds, 1995); MAX H. BAZERMAN & MARGARET NEALE, *NEGOTIATING RATIONALLY* (2002).

<sup>15</sup> *THE BARRIERS TO CONFLICT RESOLUTION*, *supra* note 14.

<sup>16</sup> See, e.g., Russell Korobkin & Chris Guthrie, *Psychology, Economics, and Settlement: A New Look at the Role of the Lawyer*, 76 TEX. L. REV. 77, 141 (1997).

<sup>17</sup> See, e.g., ROBERT B. CIALDINI, *INFLUENCE: THE PSYCHOLOGY OF PERSUASION* (1993).

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rethinking about what makes negotiations difficult<sup>18</sup>, as well as new consideration of mood<sup>19</sup> and emotions as more significant factors in negotiation.<sup>20</sup>

By the early 2000s, negotiation training was expanding again, this time to include hard sciences,<sup>21</sup> complex adaptive systems, a larger array of types of psychology,<sup>22</sup> and more from the field of anthropology, particularly in terms of thinking about cultural differences.<sup>23</sup> In most negotiation courses today—and in negotiation textbooks—students could well be reading the classics listed above plus an array of more sophisticated game theory,<sup>24</sup> cognitive psychology,<sup>25</sup> neuroscience,<sup>26</sup> emotion,<sup>27</sup> communication and persuasion,<sup>28</sup> and more.

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<sup>18</sup> DOUGLAS STONE, BRUCE PATTON & SHEILA HEEN, *DIFFICULT CONVERSATIONS: HOW TO DISCUSS WHAT MATTERS MOST* (1995).

<sup>19</sup> Clark Freshman, Adele Hayes & Greg Feldman, *The Lawyer-Negotiator as Mood Scientist: What We Know and Don't Know About How Mood Relates to Successful Negotiation*, 2002 J. DISP. RESOL. 1, 79 (2002).

<sup>20</sup> ROGER FISHER & DANIEL SHAPIRO, *BEYOND REASON: USING EMOTIONS AS YOU NEGOTIATE* (2005); Melissa Nelken, *Negotiation and Psychoanalysis: If I'd Wanted to Learn About Feelings, I Wouldn't Have Gone to Law School*, 46 J. LEGAL EDUC. 420 (1996); Melissa Nelken, Andrea Kupfer Schneider & Jamil Mahuad, *If I'd Wanted to Teach About Feelings, I Wouldn't Have Become a Law Professor*, in *VENTURING BEYOND THE CLASSROOM: VOLUME 2 IN THE RETHINKING NEGOTIATION TEACHING SERIES* 357–70 (Christopher Honeyman et al. eds., 2010) [hereinafter *VENTURING BEYOND*].

<sup>21</sup> Douglas H. Yarn & Gregory Todd Jones, *In Our Bones (or Brains): Behavioral Biology*, in *THE NEGOTIATOR'S FIELDBOOK* 283–92 (Andrea Kupfer Schneider & Christopher Honeyman eds., 2006) [hereinafter *THE FIELDBOOK*] (summarizing their research suggesting that we may be primed to collaborate more than to compete).

<sup>22</sup> Donna Shestowsky, *Psychology and Persuasion*, in *THE FIELDBOOK*, *supra* note 21, at 36–71.

<sup>23</sup> See *infra* note 53 and accompanying text.

<sup>24</sup> STEVEN J. BRAMS, *NEGOTIATION GAMES: APPLYING GAME THEORY TO BARGAINING AND ARBITRATION* (Routledge rev. ed., 2003) (1975).

<sup>25</sup> MAX H. BAZERMAN, *JUDGMENT IN MANAGERIAL DECISION MAKING* (4th ed. 1998); MALCOLM GLADWELL, *THE TIPPING POINT: HOW LITTLE THINGS CAN MAKE A BIG DIFFERENCE* (2000); STEVEN D. LEVITT & STEPHEN J. DUBNER, *FREAKONOMICS: A ROGUE ECONOMIST EXPLORES THE HIDDEN SIDE OF EVERYTHING* (Rev. and expand. ed., 2006); RICHARD H. THALER & CASS R. SUNSTEIN, *NUDGE: IMPROVING DECISIONS ABOUT HEALTH, WEALTH, AND HAPPINESS* (2009).

<sup>26</sup> DAN ARIELY, *UPSIDE OF IRRATIONALITY: THE UNEXPECTED BENEFITS OF DEFYING LOGIC AT WORK AND AT HOME* (2010).

<sup>27</sup> See generally FISHER & SHAPIRO, *supra* note 20; DANIEL GOLEMAN, *EMOTIONAL INTELLIGENCE* (1995).

<sup>28</sup> KATHLEEN KELLEY REARDON, *BECOMING A SKILLED NEGOTIATOR* (2004); G. RICHARD SHELL, *BARGAINING FOR ADVANTAGE* (2d ed. 2006).

At the same time, new subjects and fields were introduced to negotiation courses in law schools through the “Canon of Negotiation” project<sup>29</sup> and the ensuing *Negotiator’s Fieldbook*.<sup>30</sup> The Canon project started through a conference of noted negotiation theorists and teachers, attempting to find out what common items are taught in *all* negotiation classes. When, during the conference, we discovered that only six topics were taught across all of the fields,<sup>31</sup> the ensuing *Marquette Law Review* symposium and the *Fieldbook* then tackled the subjects that should or could be taught in a negotiation course in any discipline. New subjects in the *Fieldbook* included action science (based on education theory),<sup>32</sup> complexity theory,<sup>33</sup> and theory of mind.<sup>34</sup> Subjects that had already started to make their way into law teaching—emotions, trust<sup>35</sup>, apology,<sup>36</sup> heuristics, decision analysis,<sup>37</sup> game theory and others—were further explored. The *Fieldbook* also tried to expand the contexts in which we saw negotiations and identify the lessons from those contexts. Some chapters in the *Fieldbook* discuss lessons from hostage negotiations,<sup>38</sup> the military,<sup>39</sup> indigenous conflict<sup>40</sup> and even negotiating for the last seat on an oversold airplane.<sup>41</sup>

On the business school side, during the same time period (the 1980s

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<sup>29</sup> Kevin Gibson, *The New Canon of Negotiation Ethics*, 87 MARQ. L. REV. 747–52 (2004).

<sup>30</sup> Roy J. Lewicki, *Trust and Distrust*, in THE FIELDBOOK, *supra* note 21, at 191–203.

<sup>31</sup> Christopher Honeyman & Andrea Kupfer Schneider, *Catching Up with the Major-General: The Need for a “Canon of Negotiation”*, 87 MARQ. L. REV. 637–48 (2004).

<sup>32</sup> Michael Moffitt & Scott R. Peppet, *Action Science and Negotiation*, 87 MARQ. L. REV. 649–54 (2004).

<sup>33</sup> Scott H. Hughes, *Understanding Conflict in a Postmodern World*, 87 MARQ. L. REV. 681–90 (2004).

<sup>34</sup> David Sally, *Social Maneuvers and Theory of Mind*, 87 MARQ. L. REV. 893–902 (2004).

<sup>35</sup> Lewicki, *supra* note 30.

<sup>36</sup> Jonathan R. Cohen, *Advising Clients to Apologize*, 72 S. CAL. L. REV. 1009–69 (1999); Jennifer K. Robbennolt, *Apologies and Settlement*, 45 CT. REV.: THE J. OF THE AM. JUDGES ASS’N 90–97 (2009).

<sup>37</sup> Jeffery M. Senger, *Decision Analysis in Negotiation*, 87 MARQ. L. REV. 723–35 (2004).

<sup>38</sup> Paul J. Taylor & William Donohue, *Hostage Negotiations Opens Up*, in THE FIELDBOOK, *supra* note 21, at 667–74.

<sup>39</sup> Leonard L. Lira, *The Military Learns to Negotiate*, in THE FIELDBOOK, *supra* note 21, at 675–86.

<sup>40</sup> Bee Chen Goh, *Typical Errors of Westerners*, in THE FIELDBOOK, *supra* note 21, at 293–301.

<sup>41</sup> Robert Dingwall & Carrie Menkel-Meadow, *The Last Plane Out...*, in THE FIELDBOOK, *supra* note 21, at 687–97.

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and 1990s), the knowledge base about negotiation expanded dramatically. Bazerman and Lewicki<sup>42</sup> started the first research conference on negotiation in organizations, drawing scholars from multiple social science disciplines and encouraging them to share their perspectives and stimulate more ‘applied’ research on negotiation theory that went beyond simple game theory research paradigms. This initiative led to a stream of additional “Research on Negotiation in Organizations”<sup>43</sup> conferences and the formation of two new professional associations where theory and research could be shared (the Conflict Management Division of the Academy of Management and the International Association of Conflict Management), thereby creating a collegial venue for sharing new ideas and approaches. In the late 1980s, the Hewlett Foundation began funding several university centers to pursue both research and practice in dispute resolution, stimulating many cross-disciplinary conversations about negotiation theory and applications, creating new academic courses, and supporting doctoral students who broke new ground in many areas. Among the many niche research areas that emerged during this era were topics such as cognitive biases in conflict and negotiation<sup>44</sup>, ethics in negotiation<sup>45</sup>, gender and negotiation<sup>46</sup>, international and cross-cultural negotiation<sup>47</sup>, or the ways that theory and pedagogy needed to be reframed to be effectively applied to negotiating in long term relationships.<sup>48</sup> The leading textbooks<sup>49</sup> used in business school negotiation courses have regularly updated and integrated this expanding knowledge base.

The history of interdisciplinary integration into negotiation theory is a strong one with numerous disciplines contributing to the wisdom or “canon” of what is generally taught. Research agendas and empirical work support the wide expansion of these many strains into negotiation theory. Of the three challenges outlined in this essay, this first one has most

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<sup>42</sup> MAX H. BAZERMAN & ROY J. LEWICKI, *NEGOTIATING IN ORGANIZATIONS* (1983).

<sup>43</sup> *RESEARCH ON NEGOTIATION IN ORGANIZATIONS* (Roy J. Lewicki, Robert J. Bies & Blair H. Sheppard eds., 1986–1999).

<sup>44</sup> BAZERMAN & NEALE, *supra* note 14; BAZERMAN *supra* note 25.

<sup>45</sup> Bazerman & Lewicki, *supra* note 42 at 68–90

<sup>46</sup> DEBORAH M. KOLB & JUDITH WILLIAMS, *THE SHADOW NEGOTIATION: HOW WOMEN CAN MASTER THE HIDDEN AGENDAS THAT DETERMINE BARGAINING SUCCESS* (2000).

<sup>47</sup> JEANNE M. BRETT, *NEGOTIATING GLOBALLY: HOW TO NEGOTIATE DEALS, RESOLVE DISPUTES, AND MAKE DECISIONS ACROSS CULTURAL BOUNDARIES* (2001).

<sup>48</sup> LEONARD GREENHALGH, *MANAGING STRATEGIC RELATIONSHIPS: THE KEY TO BUSINESS SUCCESS* (2001).

<sup>49</sup> ROY LEWICKI, DAVID SAUNDERS & BRUCE BARRY, *NEGOTIATION* (7th ed. 2014); LEIGH THOMPSON, *THE MIND AND HEART OF THE NEGOTIATOR* (5th ed. 2012).

successfully been met in the last thirty years with every expectation that both law and business will continue to be open to receive and utilize the best advice from a variety of fields. Furthermore, the balance between giving and receiving is also well managed. Much of the explanation and justifications for integrative and problem-solving negotiation come from law and business negotiation theories.<sup>50</sup> Challenges to the negotiation paradigms established by economists or international relations theorists (which had tended to be based on purely free-market economic ends or power-based models) were crucial for advancing the field of negotiation in many different disciplines and have led to a better understanding of the cognitive and behavioral motivations behind economic decisions.<sup>51</sup> The expanding work into procedural justice in negotiation is another example of where legal frameworks can be helpfully applied in a variety of other disciplines to think about negotiation.<sup>52</sup>

## II. GLOBAL PERSPECTIVES IN NEGOTIATION

The second challenge for negotiation theory in the U.S. has been dealing with cross-cultural and international perspectives while making sure that our theory builds on expertise from all around the world. Here, the balance of input versus outputs is much more out of proportion, since much of U.S. theory is still U.S.-centered and U.S.-based.

U.S. negotiation theorists have considered global perspectives in several different ways. First, as the global economy truly emerged over the last thirty years, negotiation courses in the U.S. have tried to keep in step by including sensitivity to the differences in cross-cultural negotiation as a separate and necessary part of negotiation competence. Scholars have

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<sup>50</sup> For more on the difference and distinction of legal discourse, see JAMES BOYD WHITE, *Law as Language*, HERACLES' BOW: ESSAYS ON THE RHETORIC AND POETICS OF THE LAW 77–106 (1985).

<sup>51</sup> See, e.g., DANIEL KAHNEMAN, *THINKING, FAST AND SLOW* (2011); DAN ARIELY, *PREDICTABLY IRRATIONAL: THE HIDDEN FORCES THAT SHAPE OUR DECISIONS* (2008).

<sup>52</sup> See, e.g., Nancy A. Welsh, *Perceptions of Fairness*, in *THE FIELDBOOK*, *supra* note 21, at 165–175; Nancy A. Welsh, *Stepping Back through the Looking Glass: Real Conversations with Real Disputants about the Place, Value and Meaning of Mediation*, 19 *OHIO ST. J. DISP. RESOL.* 573 (2004); Nancy A. Welsh, *Disputants' Decision Control in Court-Connected Mediation: A Hollow Promise Without Procedural Justice*, 2002 *J. DISP. RESOL.* 179 (2002).



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addressed culture as a variable in negotiation<sup>53</sup> as well as examining the importance of understanding cross-cultural differences.<sup>54</sup>

While these training experiences may have run the risk of veering into the stereotypical—i.e. since China is culturally different from the U.S. in the way that it engages negotiations, therefore this is the way all Chinese negotiate—other scholars have insisted that negotiation training in the 21<sup>st</sup> century incorporate cross-cultural profiles and experiences into negotiation awareness and education. Naturally, the desire to train negotiators in these skills immediately begged the question about ‘what’ to teach and ‘how’ to teach it. While early works focused on the cultural nuances of a single country<sup>55</sup>, later studies proposed broad frameworks by which many cultural characteristics could be systematically aggregated and emulated in both research methodologies and training materials.<sup>56</sup> Research on cultural differences and negotiation has thrived over the last two decades.<sup>57</sup> But as one of us, in a recent review of this literature, has described it at the end of two decades:

- (1) there are many models and no one model will explain every cross-cultural situation;
- (2) most approaches to cross-cultural negotiation tend to ignore the amount of within-culture variation that exists as a function of other context factors, the nature of the problem, and so on; and
- (3) while cultural differences attempt to account for behavior at the group/aggregate level, any given member of that group may or may

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<sup>53</sup> See, e.g., KEVIN AVRUCH, *CONTEXT AND PRETEXT IN CONFLICT RESOLUTION: CULTURE, IDENTITY, POWER, AND PRACTICE* (2012); JEANNE M. BRETT, *NEGOTIATING GLOBALLY: HOW TO NEGOTIATE DEALS, RESOLVE DISPUTES, AND MAKE DECISIONS ACROSS CULTURAL BOUNDARIES* (3d ed., 2014).

<sup>54</sup> PAT CHEW, *THE CONFLICT AND CULTURE READER* (2001).

<sup>55</sup> See, e.g., John L. Graham, *A Comparison of Japanese and American Business Negotiations*, 1 INT’L J. RES. MARKETING 51–68 (1984).

<sup>56</sup> GEERT HOFSTEDE, *CULTURE’S CONSEQUENCES: INTERNATIONAL DIFFERENCES IN WORK-RELATED VALUES* (1980); Stephen E. Weiss, *Negotiating with “Romans”: A Range of Culturally-Responsive Strategies—Part 1*, 35 SLOAN MGMT. REV. 51–61 (1994); Stephen E. Weiss, *Negotiating with “Romans”: A Range of Culturally-Responsive Strategies—Part 2*, 35 SLOAN MGMT. REV. 1–16 (1994).

<sup>57</sup> Cf. *THE HANDBOOK OF NEGOTIATION AND CULTURE* (Michele J. Gelfand & Jeanne M. Brett eds., 2004). See MARA OLEKALNS & WENDI L. ADAIR, *HANDBOOK OF RESEARCH ON NEGOTIATION* (2013) for reviews. See also early examples in the OHIO STATE JOURNAL ON DISPUTE RESOLUTION. Nobuaki Iwai, *Alternative Dispute Resolution in Court: The Japanese Experience*, 6 OHIO ST. J. ON DISP. RESOL. 201 (1991); Christine M. Chinkin & Romana Sadurska, *The Anatomy of International Dispute Resolution*, 7 OHIO ST. J. ON DISP. RESOL. 39 (1991).

not demonstrate those qualities.<sup>58</sup>

The second way of meeting this global challenge has been to write about international conflict using U.S. negotiation theories.<sup>59</sup> For example, scholars have addressed the thorny issues of when to negotiate<sup>60</sup>, how to prepare best, how to manage domestic politics<sup>61</sup>, and when to reach an agreement.<sup>62</sup> Theories of two-level diplomacy emerging from political science and issues of when to negotiate with terrorists<sup>63</sup> are just recent examples of negotiation theory tackling global issues.

But in both of these realms, the input from cultures around the world is missing.<sup>64</sup> The field is clearly cognizant of the importance of reaching out to scholars around the world (as shown through the establishment of the International Association of Conflict Management<sup>65</sup> and the ensuing journals<sup>66</sup>). After the *Fieldbook* was published, one of the most salient critiques was that the book was still rather Western and particularly U.S.-centered.<sup>67</sup> And it was true—we had authors from the United States, Britain, Australia, and Israel, but these were all Western understandings of

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<sup>58</sup> Roy J. Lewicki, *Teaching Negotiation: The State of the Practice*, in HANDBOOK OF CONFLICT MANAGEMENT RESEARCH 493 (Oluremi B. Ayoko et al. eds., 2014); LEWICKI, SAUNDERS & BARRY, *supra* note 49.

<sup>59</sup> See INTERNATIONAL DISPUTE RESOLUTION: VOL. III OF COMPLEX DISPUTE RESOLUTION (Carrie Menkel-Meadow ed., 2012) (a collection of essays on the subject).

<sup>60</sup> ROBERT MNOOKIN, *BARGAINING WITH THE DEVIL: WHEN TO NEGOTIATE, WHEN TO FIGHT* (2011).

<sup>61</sup> Andrea Kupfer Schneider, *Public and Private International Dispute Resolution*, in THE HANDBOOK OF DISPUTE RESOLUTION (2005) at 442–43; Robert Putnam, *Diplomacy and Domestic Politics: The Logic of Two-Level Games*, in DOUBLE-EDGE DIPLOMACY, INTERNATIONAL BARGAINING AND DOMESTIC POLITICS (1993).

<sup>62</sup> See, e.g., Andrea Kupfer Schneider, *The Day After Tomorrow: What Happens Once A Middle East Peace Treaty is Signed?*, 6 NEV. L.J. 401, 401–20 (2005).

<sup>63</sup> Michael Fowler, *The Relevance of Principled Negotiation to Hostage Crisis*, 12 HARV. NEGOT. L. REV. (2007).

<sup>64</sup> It appears we get more parenting advice from the French than negotiation advice (see, e.g., PAMELA DRUCKERMAN, *BRINGING UP BEBE* (2012)) and have not really paid attention to any theories of negotiation coming from Italy since Machiavelli.

<sup>65</sup> INTERNATIONAL ASSOCIATION FOR CONFLICT MANAGEMENT, <http://www.iacm-conflict.org> (last visited June 17, 2015).

<sup>66</sup> See generally THE INTERNATIONAL JOURNAL OF CONFLICT MANAGEMENT, THE NEGOTIATION AND CONFLICT MANAGEMENT RESEARCH JOURNAL, and the INTERNATIONAL NEGOTIATION JOURNAL.

<sup>67</sup> Michael Wheeler, *Integration, Not Fractionation*, DISP. RESOL. MAG. 33–35 (2006) (reviewing THE FIELDBOOK, *supra* note 21).

conflict.

An obvious way to find scholars from around the world is to travel to them rather than expect their work will make it into English language journals. Building on the interdisciplinary work already done with *Fieldbook*, some scholars used the *Rethinking Negotiation Teaching* series of meetings and books to go overseas. Using three meetings to move further from the U.S.—in Rome, Istanbul, and Beijing—negotiation scholars produced four books that demonstrate the need to integrate international thinking.<sup>68</sup> For example, when presenting on gender differences in negotiation in Istanbul, it was crucial to recognize the difference in cultures and law that define the problem.<sup>69</sup> Not surprisingly, advice we might give for dealing with a particular situation in the United States would be different if we were in Turkey.<sup>70</sup> At the meeting in Beijing, the difference in how deception in the negotiation was handled by U.S. law students versus their Chinese counterparts was fascinating. The resulting book chapter—written with two Chinese co-authors—explores where both legal and philosophical differences would result in different expectations and different behaviors.<sup>71</sup>

The international and cross-cultural challenge is an understandable one.<sup>72</sup> Most of us are limited to reading in our native language and interacting with those scholars who are at the meetings we attend. Growing up in a culture shapes our thinking about the processes and dynamics by which negotiation occurs, and hinders our intuitive

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<sup>68</sup> CHRISTOPHER HONEYMAN, JAMES COBEN & GIUSEPPE DE PALO, *RETHINKING NEGOTIATION TEACHING: INNOVATIONS FOR CONTEXT AND CULTURE* (2009); *VENTURING BEYOND*, *supra* note 20; CHRISTOPHER HONEYMAN, JAMES COBEN & NOAM EBNER, *ASSESSING OUR STUDENTS, ASSESSING OURSELVES: VOLUME 3 IN THE RETHINKING NEGOTIATION TEACHING SERIES* (2012); CHRISTOPHER HONEYMAN, JAMES COBEN, ANDREW WEI-MIN LEE, *EDUCATING NEGOTIATORS FOR A CONNECTED WORLD: VOLUME 4 IN THE RETHINKING NEGOTIATION TEACHING SERIES* (2012).

<sup>69</sup> Andrea K. Schneider, Sandra Cheldelin & Deborah Kolb, *What Travels: Teaching Gender in Cross Cultural Negotiation Classrooms*, 31 *HAMLINE J. PUB. L & POL'Y* 531–50 (2010).

<sup>70</sup> Jean-Francois Roberge & Roy J. Lewicki, *Should We Trust Grand Bazaar Carpet Sellers (and Vice Versa)?*, in *VENTURING BEYOND*, *supra* note 20, at 405–20.

<sup>71</sup> Andrea Kupfer Schneider, Ellen E. Deason, Dawn Chen & Zhouxh Xiahong, *Ethics in Legal Negotiation: A Cross-Cultural Perspective*, in *EDUCATING NEGOTIATORS FOR A CONNECTED WORLD*, *supra* note 68; LEWICKI, SAUNDERS & BARRY, *supra* note 49.

<sup>72</sup> See Carrie Menkel-Meadow, *Correspondences and Contradictions in International and Domestic Conflict Resolution: Lessons from General Theory and Varied Contexts*, *JOURNAL OF DISPUTE RESOLUTION* 319 (2003).

appreciation that other cultures may engage the process differently. Moreover, managing to keep up with the literature in one language (and in multiple fields as outlined above) is more than enough without trying to locate and translate the best works in other countries. We know that it is much easier (and less expensive) to read the newspaper and study a conflict from afar, than to it is to travel there in person.<sup>73</sup> Finally, there are so many cross-cultural differences on so many different aspects of the negotiation process that few people can master the nuances of the negotiation dance in more than two cultures. Yet we know that these types of exchanges must be promoted and expanded before we can claim that U.S. negotiation theory is building on global best practices.

### III. TURNING THEORY INTO PRACTICE

The third challenge is to continually push the negotiation theory so that it is practical and implemented. This is perhaps the original challenge of negotiation—after all, why would we spend time thinking about the theory if we could not actually improve the practice of our students? And yet, because of our success in these classes and the apparent contentment of our students, we know the least about what is working to meet this challenge. Most negotiation courses include some combination of theory (conceptual approaches, empirical studies, and research findings) and practice (role-plays, applications, and case studies). Yet at the same time, the instructional model for business and law school negotiation courses has remained fundamentally unchanged in the last twenty years. The current format combines a negotiation text and/or excerpted readings on negotiation<sup>74</sup> with multiple role-play scenarios, designed and selected to emphasize effective planning, the dynamics of key strategy and tactics (distributive and integrative negotiation, power, ethics, individual differences), and self-reflection papers/diaries/feedback approaches designed to help the student personalize key learning points and be more skillful in future negotiations. Few video models or case studies of effective/ineffective negotiation exist, and, more critically, there has been almost no research to examine whether these instructional methods do, in fact, improve the

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<sup>73</sup> Andrea Kupfer Schneider & Katie Lonze, *Get on the Plane: Why Understanding the Israeli-Palestinian Conflict is Best Done by Traveling There*, 15 CARDOZO J. CONFLICT RESOL. (2013).

<sup>74</sup> See, e.g., ROY LEWICKI, DAVID SAUNDERS & BRUCE BARRY, NEGOTIATION: READINGS, EXERCISES AND CASES (7th ed. 2014); LEWICKI, SAUNDERS & BARRY, *supra* note 49; CARRIE MENKEL-MEADOW, ANDREA KUPFER SCHNEIDER & LELA PORTER LOVE, NEGOTIATION: PROCESSES FOR PROBLEM SOLVING (2014).

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negotiating effectiveness of students.<sup>75</sup>

Given that faculty in both law and business schools are smart, curious, and ‘professionally skeptical’ about almost anything, how can we explain the ongoing tendency to not question the efficacy of most teaching practice in negotiation? Here are some initial thoughts:

1. The courses are dominantly built on a highly accepted ‘theory’ of experiential learning<sup>76</sup> that includes elements of theory, ‘application of theory to skills and situation’, ‘practice’, and ‘reflection on practice’ to improve both personal skills as well as refine theory. The assumption is that most negotiation courses—intentionally or unintentionally—address all four components of the model at one time or another, and by recycling multiple times through this sequence within the boundaries of an academic course, they constitute an effective application of the experiential learning model to negotiation instruction.

2. Students love the course because it is more personally and emotionally engaging than traditional case study or lecture/discussion, *and* because the practicality of the skills being taught is transparently applicable to professional life. The content is seen by students as immediately relevant because it is a critical professional skill and life skill. Students recognize that while certain professional domains (sales; litigation; real estate; labor relations; merger and acquisition) will require regular and intense negotiations, being an effective negotiator contributes to career success and success in all types of personal relationships. As a result, most negotiation courses receive high student ratings, and demand for the courses remains high year after year. In short, professors have little incentive to change or even question the efficacy of the course.

3. Because the course is so continually successful, the instructional approach requires very little modification from offering to offering; yet the students experience it as both ‘new’ and occasionally ‘unique.’ From the instructor’s perspective, the course format can remain fundamentally the same from year to year; perhaps only by interchanging a few of the role-plays and as long as past students do not cross-share simulation materials, the process will continue to be successful. From the student’s point of view, in spite of the fact that many of the scenarios appear to be ‘obvious’ in terms of necessary behaviors and likely outcomes, one of the most enlightening parts of a course can be the unpredictable behavior patterns and surprise outcomes that result. Moreover, most business and law students are competitive by nature; the role-plays and simulations engage their ‘real’ competitive dispositions in ways that

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<sup>75</sup> Cf. Hal Movius, *The Effectiveness of Negotiation Training*, 24 NEGOT. J. 509 (2008); Lewicki, *supra* note 58.

<sup>76</sup> David Kolb, *Management and the Learning Process*, in ORGANIZATIONAL PSYCHOLOGY: A BOOK OF READINGS (David Kolb et al. eds., 1974).

sometimes help, but also can impede their effectiveness, and hence broaden their perspective about how to achieve the results they desire.

4. Finally, at least in the business arena, doing ‘research on teaching’ (i.e. is the dominant instructional paradigm really working, effective, etc.) is far less likely to be rewarded by university promotion and tenure committees than laboratory testing more “rigorous” (but also more likely obscure) points about a specific negotiation strategy, tactic, cognitive bias or perspective. As a result, there is remarkably little research on whether the existing paradigms ‘do what they are purported to do’—i.e. effectively develop new and lasting negotiation skills in students.

These elements actively feed each other as generations of students experience the course, and create a powerful legacy that emphasizes the importance of taking it as part of one’s graduate education. Comparable but weaker legacies are created by students in undergraduate-level courses and in executive education seminars.

And yet we know that it is incredibly complex to develop effective practitioners; best practices for teaching are not yet defined.<sup>77</sup> The next challenges ahead are in *what* we teach (as outlined above in the earlier parts of this essay) as well as *how* we teach negotiation courses.

We should not, however, assume that the *who* of our teaching is not equally important for this particular challenge of making negotiation theory practical. In fact, the changing audience of negotiation theory might explain some of the challenges listed above in the cross-cultural discussion. Machiavelli had great impact not only from the strength of his words but because he wrote to the most powerful ruler of the day in a language that educated men spoke.<sup>78</sup> Two hundred years later, when every diplomat spoke French, de Callieres could be read by everyone who mattered.<sup>79</sup> Even fifty years ago, the target audience for political scientists writing on negotiation<sup>80</sup> was far more homogenous—white, male, affluent, and well-educated—than the audience for negotiation is now. This diversity of our current student

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<sup>77</sup> Christopher Honeyman, Scott H. Hughes & Andrea K. Schneider, *How Can We Treat So It Takes?*, 20 CONFLICT RESOL. Q. 429–32 (2003); Scott R. Peppet & Michael L. Moffitt, *Learning How to Learn to Negotiate*, in THE FIELDBOOK, *supra* note 21, at 615–27; Andrea K. Schneider & Julie Macfarlane, *Having Students Take Responsibility for the Process of Learning*, 20 CONFLICT RESOL. Q. 455–62 (2003).

<sup>78</sup> NICCOLO MACHIAVELLI, THE PRINCE (1988).

<sup>79</sup> FRANCOIS DE CALLIERES, ON THE MANNER OF NEGOTIATIONS WITH PRINCES (2010).

<sup>80</sup> See, e.g., JULIA CHANG BLOCH, *Women and Diplomacy*, COUNCIL AM. AMBASSADORS (2004), <https://www.americanambassadors.org/publications/ambassadors-review/fall-2004/women-and-diplomacy> (noting that the diplomatic corps was without significant numbers of women and minorities well into the 1980’s.)

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body—in age, gender, race, and experience—is a benefit to our fields in many, many ways. And it also means that teaching negotiation needs to take account of the heterogeneity of the audience.<sup>81</sup>

As we have written about before, negotiation teachers might benefit from thinking about their offerings at three levels.<sup>82</sup> Analogizing to car repair shops, we could think about negotiation training as quick repair shops, full service mechanics, and specialized mechanics. In the quick repair shop, our training is standardized as a package and the consumer accepts the package as is. For many of us that have been teaching a long time, our negotiation workshop—however brilliant—is a quick repair shop where we offer our standard package to our standard students. (One time trainings or particular corporate clients might actually get the higher level mechanics as these are specialized for that customer.)

Furthermore, even as we add more subjects and disciplines to negotiation theory, the practicality of getting a student to execute optimal negotiation skills remains a challenge. For this reason, one of us has focused most recently on outlining key skills for effective negotiators and developing a rubric of best practices under each of those categories.<sup>83</sup> Rather than focus on the theory of the most effective style or approach to negotiation (where different cultural assumptions can be made about what is competitive versus cooperative), we can drill down to the skills that each student should have in their repertoire regardless of which style they choose. This is one way of translating the theory of negotiation styles into specific practices.

These five skills are assertiveness, empathy, flexibility, social intuition, and ethicality. Without a full repertoire of skills, it becomes nearly impossible to have sufficient style choices. For example, without the ability to empathize, the “accommodating” style or “collaborating” style are much harder to execute effectively. The fan below, or negotiation origami<sup>84</sup>, is what a pyramid of the five skills would like look unfolded. Imagine that the goal is best practices at each of these five skills (the bigger dot). And that, in reality, we are likely using a mix of minimal, average, or best practices in any given negotiation (as shown in the example below.) With a standard template of skills, students can start to evaluate and review their negotiation skills for level of expertise in their multiple interactions.

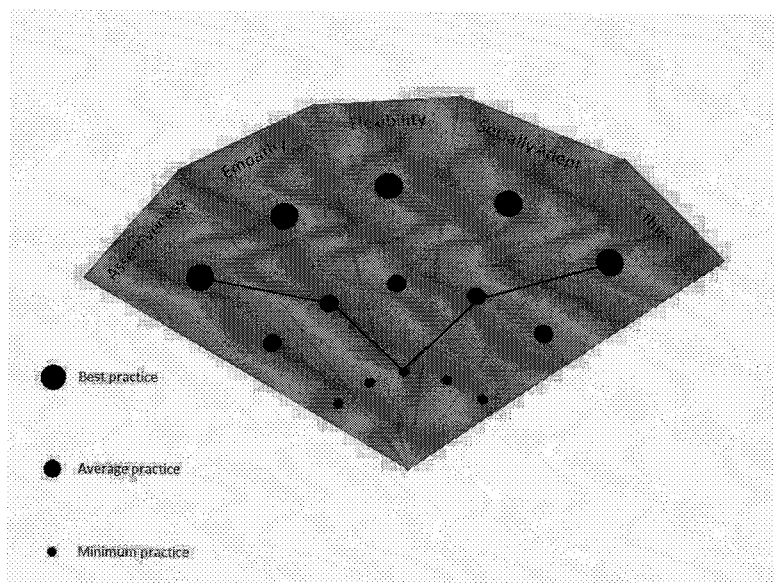
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<sup>81</sup> Roy J. Lewicki & Andrea Kupfer Schneider, *Instructors Heed the Who: Designing Negotiation Training with the Learner in Mind*, in VENTURING BEYOND, *supra* note 20, at 10–39.

<sup>82</sup> *Id.*

<sup>83</sup> Andrea Kupfer Schneider, *Teaching a New Negotiation Skills Paradigm*, 39 WASH. U. J.L. & POL’Y 13–38 (2012).

<sup>84</sup> *Id.* at 35.



For example, knowing your Best Alternative to a Negotiation Agreement (BATNA) is a minimum skill of assertiveness, attaching a reservation point to that BATNA could be considered an average skill, and figuring out how to improve your own BATNA while in the midst of a negotiation would be an example of best practices. This focus on skills and specific actions also makes it easier for diverse audiences to understand and implement effective behaviors. We are not assuming a shared vocabulary or homogenous professional training in order to translate these theories into practice.<sup>85</sup>

Negotiation teachers have been quite successful at enrolling and encouraging students to build their negotiation skills. The popularity and ongoing recognition that these skills need to be taught remains consistently high.<sup>86</sup> Similarly, practitioners regularly write advice books on negotiation trying to turn their particular success into generalizable negotiation theory, keeping a popular focus on negotiation theory.<sup>87</sup> The challenge for all of us

<sup>85</sup> See Lewicki & Schneider, *supra* note 81, at 55–56 (arguing for a base of “core skills” and micro skill building).

<sup>86</sup> Recent calls for a more practical approach to law school only highlight the importance of teaching problem-solving skills. See Andrea Kupfer Schneider, Jill Gross & John Lande, *Teaching Students to be Problem-Solvers and Dispute-Resolvers*, in BUILDING ON BEST PRACTICES: TRANSFORMING LEGAL EDUCATION IN A CHANGING WORLD, at 376–83 (Deborah Maranville et al. eds., 2015). See also ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION (2007).

<sup>87</sup> See, e.g., DEEPAK MALHOTRA & MAX BAZERMAN, NEGOTIATION GENIUS (2007); ADAM GRANT, GIVE AND TAKE: WHY HELPING OTHERS DRIVES OUR SUCCESS (2013).



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moving forward is to continue to unpack what skills are needed for effectiveness, to test this empirically, and to teach these to students in ways they can implement the skills.

### **IV. CONCLUSION**

In looking at negotiation challenges both past and future, the field has been impressive. We have rather successfully integrated other disciplines into what we teach, have created several effective methodologies for doing so, and seem to have every intention to continue to do so. Other challenges are harder (and more expensive.) We need to travel, continue to build connections, meet others from around the world, and be open-minded to the global expertise that is out there. In terms of practicality, the testing of what is effective will also be difficult. More than lab testing of micro-moves, our field is still looking for ways of identifying and measuring negotiation effectiveness. Luckily, with symposia and journals such as this, we are sure that this work will continue to be supported for another thirty years.

